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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,968	04/14/2006	Marco Poppi	1034170-000031	5120

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BUCHANAN, INGERSOLL & ROONEY PC
POST OFFICE BOX 1404
ALEXANDRIA, VA 22313-1404

EXAMINER

WEEKS, GLORIA R

ART UNIT	PAPER NUMBER
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3721

NOTIFICATION DATE	DELIVERY MODE
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01/16/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com

Office Action Summary	Application No. 10/575,968	Applicant(s) POPPI, MARCO	
	Examiner GLORIA R. WEEKS	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to the amendment and remarks received on October 23, 2008.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 11-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Fontanazzi (USPN 6,038,838).

In reference to claims 11-21, Fontanazzi discloses a form-and-seal unit comprising: a fixed structure 6, 7 symmetrically positioned relative to a vertical longitudinal plane; forming means which interact cyclically with a tube of packaging material 14, the forming means comprise at least two pairs of jaws 20 having sealing means 12, 13 movable between an open position (figure 5 and a closed position (figure 6); respective pairs of forming flaps 37 carried by the respective jaws 20, and having respective half-shell forming portion 22 capable of defining various volumes/types of packages (column 1 lines 57-65); a fixed cam plate 50, 51 having a first and second pair of work profiles 50a, 50b, 51a, 51b, wherein the first and second work profiles define a top cam profile 50a, 51a, spaced a distance from the vertical longitudinal plane, the fixed cam further having a bottom cam profile 50b, 51b, 79, 80 spaced a second and different distance from the vertical longitudinal plane with respect to the top cam profile (figure

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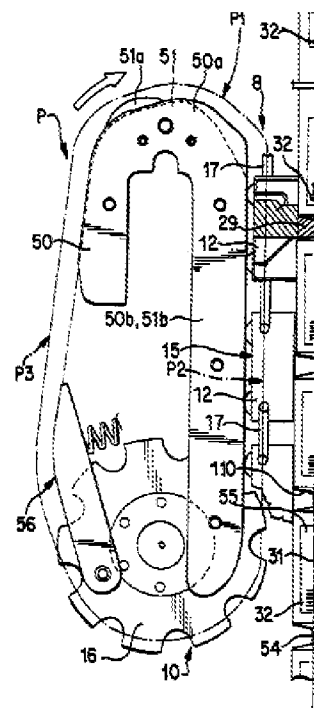
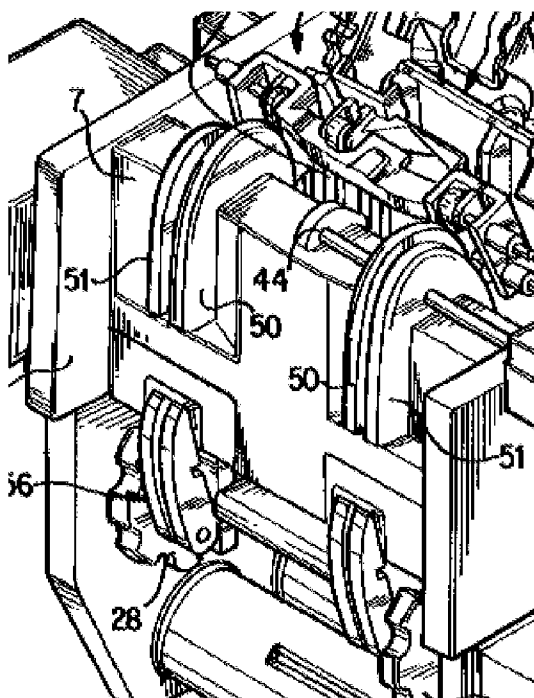
2); and two cam follower rollers 52 spaced apart and carried by/mounted on each forming flap 37.

Response to Arguments

4. Applicant's arguments filed October 23, 2008 have been fully considered but they are not persuasive.

5. Applicant has requested clarification of the two pair of work profiles disclosed by Fontanzazzi, as well as the disclosure of different sized forming flaps.

As shown below, element 50 defines a first cam work profile spaced, wherein there are two first cam work profiles spaced from one another on a common side of a longitudinal axis defined by the feed direction of the packaging material; and a pair of second cam work profiles 51, each second cam work file associated with a respective spaced first cam work profile. The paired arrangement of the cam profiles to guide each half shell of each forming assembly.



It should be noted that a reference is not limited to what the patentees describe as their own invention(s) or to the problem(s) with which they are concerned; rather the reference is relevant for all it contains. Essentially, a reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including non preferred embodiments. Figure 2 of Fontanzazzi illustrates a first forming assembly 12, including a pair of half shells 37, and a second/different forming assembly 12, also including a pair of half shells 37. Column 1 lines 53-56 of Fontanzazzi references the knowledge of the prior art to control the volume of a package; such prior art including the disclosure of U.S. Patent No. 5,001,891 of Abate. Both Fontanzazzi and Abate reference respective forming assemblies as means for controlling the volume of a package, wherein column 2 lines 63- column 3 line 14 of Abate state that a change in the distance between two opposed half shells results in a change in the volume of the packages formed. Such an adjustment causes the forming flaps to have a depth of first size (inner spring compressed) to define packages of a smaller volume, and a depth of a second size (inner spring extended) to define packages of a larger volume.

While the cams are disclosed as adjustable in order to accommodate such a change in size of the forming flaps, the cams are in a "fixed" state when the apparatus is in an operative mode, such that the cam profiles moved from a first fixed state to accommodate the forming flaps of a first size, to a second fixed state to accommodate the forming flaps of a second size.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to GLORIA R. WEEKS whose telephone number is (571)272-4473. The examiner can normally be reached on M-F 7am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199

/Gloria R. Weeks/

Examiner, Art Unit 3721

/Rinaldi I Rada/

Supervisory Patent Examiner, Art Unit
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January 14, 2009